(33,864)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 555

HARRY F. SINCLAIR

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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[fol. 1]

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 4681

HARRY F. SINCLAIR, Appellant,

vs.

UNITED STATES OF AMERICA

Certification to the Supreme Court of the United States

STATEMENT OF FACTS

The Court of Appeals of the District of Columbia hereby certifies that the record in the above entitled case discloses the following facts:

Harry F. Sinclair was indicted in the Supreme Court of the District of Columbia for a violation of the provisions of Section 102, R. S. U. S., which provides as follows: "Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any Committee of either House of Congress, wilfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100, and imprisonment in a common jail for not less than one month nor more than twelve months."

The attention of the Senate of the United States was directed to certain leases of oil reserve lands in California and Wyoming, and to alleged fraud and irregularities in [fol. 2] connection with the granting of said leases. The lease in Wyoming had been made between the Secretary of the Interior and the Secretary of the Navy, acting on behalf of the United States, and certain companies represented by the defendant Sinclair. The Senate on April 29, 1922, adopted Senate Resolution No. 282, authorizing its Committee on Public Lands and Surveys "to investigate this entire subject of leases upon naval oil reserves, with

particular reference to the protection of the rights and equities of the Government of the United States and the preservation of its natural resources, and to report its findings and recommendations to the Senate."

This resolution was amended on June 5, 1922, by Senate Resolution No. 294, authorizing the Committee "to require the attendance of witnesses by subpœnas or otherwise; to require the production of books, papers, and documents; and to employ counsel, experts, and other assistants, and stenographers, at a cost not exceeding $1.25 per printed page. The chairman of the committee, or any member thereof, may administer oaths to witnesses and sign subpœnas for witnesses; and every person duly summoned before said Committee, or any subcommittee thereof, who refuses or fails to obey the process of said Committee or appears and refuses to answer questions pertinent to said investigation shall be punished as prescribed by law."

[fol. 3] On February 5, 1923, by Senate Resolution No. 434, Senate Resolution No. 282, agreed to April 21, 1922, and Senate Resolution No. 292, agreed to May 15, 1922, were "continued in full force and effect until the end of the Sixty-eighth Congress, and until otherwise ordered by the Senate."

On February 7, 1924, by Senate Resolution No. 147, the Committee was further authorized "to investigate this entire subject of leases upon naval oil reserves, with particular reference to the protection of the rights and equities of the Government of the United States and the preservation of its natural resources, and to ascertain what, if any, other or additional legislation may be advisable, and to report its findings and recommendations to the Senate." This Resolution vested the Committee with the same authority in respect of subpœning witnesses and employing counsel, and administering oaths to witnesses as was provided in Resolution No. 294.

On February 8, 1924, Senate Joint Resolution No. 54 was adopted in which it was asserted in effect that from the evidence taken by the Committee it appeared that the leases executed by Albert B. Fall, Secretary of the Interior, and Edwin Denby, Secretary of the Navy, of Naval Reserve No. 3 in Wyoming (Teapot Dome) to the Mammoth Oil Company acting through Harry F. Sinclair as its president,

[fol. 4] and of Naval Reserve No. 1 in the State of California to the Pan American Petroleum Company "were executed under circumstances indicating fraud and corruption." After asserting that the leases were executed without authority and "in defiance of the settled policy of the Government, adhered to through three successive administrations, to maintain in the ground a great reserve supply of oil adequate to the needs of the Navy in any emergency threatening the national security," it was resolved that the leases were against public interest and that the land should be recovered. The President was accordingly authorized to cause suits to be instituted for the annulment and cancellation of the leases, and to direct the institution of such criminal proceedings "as may be warranted by the facts in relation to the making of the said leases and contract. The President was authorized to appoint competent attorneys, by and with the advice and consent of the Senate, to prosecute any cases so instituted. Counsel were so appointed, and a bill in equity was filed in the United States District Court for the District of Wyoming to annul the lease to the Mammoth Oil Company, and a special Grand Jury was summoned in the District of Columbia to investigate the matter and prefer such charges as it might deem proper.

Mr. Sinclair was summoned on March 19, 1924, to appear before the Senate Committee on Public Lands and Surveys for the purpose of giving testimony and producing papers. [fol. 5] When he appeared before the Committee, he made the following statement:

"I do not decline to answer any question upon the ground that my answers may tend to incriminate me, because there is nothing in any of the facts or circumstances of the lease of Teapot Dome which does or can incriminate me.

In January of last year I was called before the Manufacturers Committee of the Senate and produced all books and papers called for and testified fully regarding the lease of Teapot Dome and the organization of Mammoth Oil Company, which holds that lease. On October 28th last past, I came before your Committee and answered all questions put to me by your Committee in respect to the lease of Teapot Dome and the organization of Mammoth Oil Company and was excused. In the afternoon of the same day

I was recalled and answered all questions put to me by your Committee and was again excused. On December 4th, last past, I was called again before your Committee and answered all questions put to me and had my auditor present, who also testified. I was requested to furnish the Committee with certain papers and memoranda, which was promptly done. On December 27th, last past, I was again called before your Committee and answered all questions put to me and produced all books and papers asked for by the Committee. I was then excused until the 4th of January, on which date I again appeared and answered all questions put to me by the Committee and produced all [fol. 6] books and papers asked for, and I was finally excused from further attendance.

Thus, it appears that I have been before your Committee at five different sessions and answered all questions and produced all books and papers called for, and I was finally excused from further attendance. I went abroad on business which had been delayed owing to the necessity of my attendance on your hearings, as I had a perfect right to do, without secrecy and without evasion.

When I appeared before your Committee at these dates and answered your questions and produced all books and papers asked for, your Committee was acting under Senate Resolution 282 of the Sixty-seventh Congress, which authorized you:

'To investigate the entire subject of leases upon naval oil reserves with particular reference to the protection of the rights and equities of the United States and the preservation of its natural resources.'

Since the date of my last appearance before your Committee, and at the instance of your Committee, the Senate and House passed Senate Joint Resolution No. 54, which has been signed by the President. I make that resolution a part of this statement."

Senate Joint Resolution was here quoted as part of the statement.

"This resolution, in effect, denounces the lease between the Government and the Mammoth Oil Company, of which [fol. 7] I am President, as void because of fraud and cor-

ruption and for want of lawful authority on the part of the Secretary of the Navy and the Secretary of the Interior to execute it. This is an assertion that under the 'rights and equities' of the United States the land covered by the lease of Teapot Dome belongs to the United States. The resolution further asserts that the lease was made 'in defiance of the settled policy of the Government, adhered to through three successive administrations, to maintain in the ground a great reserve supply of oil, adequate to the needs of the Navy in any emergency threatening the national security.' This is a definite outline of the policy of the Government with respect to the 'preservation of its natural resources.' The resolution further declares said lease is 'against the public interest and the lands embraced therein should be recovered and held for the purpose to which they were dedicated.' This is a further definite declaration of the policy of the Government for the 'preservation of its natural resources.'

It further provides:

'That the President of the United States be, and he hereby is, authorized and directed immediately to cause suit to be instituted and prosecuted for the annulment and cancellation of the said leases and contract and all contracts incidental or supplemental thereto; to enjoin the further extraction of oil from the said reserves under said [fol. 8] leases or from the territory covered by the same, to secure any further appropriate incidental relief and to prosecute such other actions or proceedings, civil and criminal, as may be warranted by the facts in relation to the making of said leases and contract.' The President was further authorized to employ special counsel to prosecute such litigation and in a further resolution instituted in the House, one hundred thousand dollars was appropriated to cover the expenses incurred in such litigation.

Thereafter the President, by and with the advice and consent of the Senate, did appoint counsel, who were duly sworn and took their office as Special Counsel to the Government authorized by said Senate Joint Resolution No. 54, and the said counsel by bill of complaint in the District Court of the United States for the District of Wyoming, sued the Mammoth Oil Company, the holder of the lease, the Sinclair Crude Oil Purchasing Company and the Sin-

clair Pipeline Company and applied for relief by temporary injunction and receivers, which was granted. In said bill of complaint it is charged in paragraph 28:

'In negotiating and concluding said agreement said Albert B. Fall and said Harry F. Sinclair, acting for and on behalf of the defendant Mammoth Oil Company, did fraudulently and covinously combine, confederate and conspire, in the manner and in the acts hereinabove set forth and other matters and things, to defraud the United States of America:

[fol. 9] '(a) By granting said lease upon said naval petroleum lands in violation of law;

'(b) To favor and prefer said defendant Mammoth Oil Company over and above other persons desirous of taking lease upon said lands;

'(c) To insure to said defendant Mammoth Oil Company the valuable right to receive and take to exhaustion all of the oil and gas which might be obtained from said lands in said agreement mentioned;

'(d) To lease the said lands to said defendant Mammoth Oil Company by said agreement at an inadequate, improper and fraudulent consideration.'

And thereafter the said Special Counsel, acting for the Government, made an official announcement that application had been made for the organization of a Special Grand Jury in the District of Columbia, for the purpose of inquiring into offenses and crimes growing out of the circumstances attending the execution of this lease.

It is perfectly clear, therefore, from the language of the resolution that your Committee by reason of any constitutional power which it may possess or by virtue of the resolution under which it is acting is not now engaged, nor could it be engaged in an investigation 'with particular reference to the protection of the rights and equities of the United States and the preservation of its natural re-[fol. 10] sources;' because the Senate, from whom you derive your authority, has unanimously passed upon all questions embraced within that authorization and exhausted whatever power or authority it had in the premises. It is

further perfectly clear that the Congress and the President have made of the whole matter a judicial question, determinable solely by the courts of the country, and such question is now actually pending in the District Court of the United States for the District of Wyoming and whatever criminal act is claimed is about to be investigated by a Special Grand Jury of the District of Columbia. With due respect to your Committee, I claim that you are without any jurisdiction to question me further regarding the procurement of the lease or the validity thereof or any fact or circumstance pertaining thereto; that such an examination of me by your Committee would not only be clearly outside of your jurisdiction but would be, in effect, an examination before trial in a civil action between the Government and the Company I represent, by a body of men wholly unauthorized by law and in a wholly unauthorized manner. Or, if your examination should be directed toward eliciting facts concerning fraud or corruption your Committee in effect would have constituted itself a grand jury as to a matter which Congress and the President, by Joint Resolution 54, have directed should be presented to the constitutional authorities of the country.

I am the President of the Mammoth Oil Company and as [fol. 11] such represent all others interested in that Company. I negotiated the lease of Teapot Dome and am responsible for those negotiations. Any pertinent question which your Committee could ask would necessarily relate to the procurement of that lease and its validity. You and the body from which you derive your authority have already sat in judgment on these questions and remitted them to courts of proper jurisdiction. I shall reserve any evidence I may be able to give for those courts to which you and your colleagues have deliberately referred all questions of which you had any jurisdiction and shall respectfully decline to answer any questions propounded by your Committee."

A motion was made to proceed with the examination of Mr. Sinclair, whereupon Senator Bursum offered an amendment providing that the "examination shall not relate to any matter now pending in the Federal court in

which case Mr. Sinclair may be a defendant." This led to the following discussion:

"Senator Dill: Mr. Chairman, that is the same thing as saying that he shall not be called, because the Committee has no interest in anything except the cases before the court.

Senator Bursum: Not necessarily. We may have other questions. The Senator from Montana referred yesterday to pending legislation. There may be other matters. I do not mean to say that Mr. Sinclair is disqualified as a witness on matters relating to pending legislation.

Senator Dill: No; but they touch naval oil reserves and [fol. 12] the leasing of reserves, and that certainly touched this case.

Senator Bursum: If they are pending in court, it seems to me there ought not to be two courts.

Senator Walsh of Montana: I stated yesterday, Mr. Chairman, and nobody has undertaken to contradict it, that there is no rule of law in any court which excuses a man from testifying because of matters involved in some litigation pending elsewhere.

Senator Bursum: It is not pending elsewhere. It is only pending in one place. It is pending in the Federal court.

Senator Walsh of Montana: That is elsewhere. That is some litigation somewhere else, not right before this Committee. A man is never excused from testifying in one court because he has litigation involving the same matter in some other court.

Senator Spencer: I think Senator Walsh is entirely right about that.

Senator Bursum: I would not construe this Committee as a court, however.

Senator Spencer: I think Senator Walsh is entirely right about that. As to any question of right, the point of the Senator from New Mexico, as I gather it, would not apply to the right of the witness to be excused because he had a case pending. If it had any materiality, it would apply [fol. 13] to our sense of fairness in trying to get from him facts in connection with matters in which he was already being sued at our instance, but he has no right to claim exemption from our examination merely because he had a case pending. I suggest, Mr. Chairman, that the witness

be called, and the matter come up when the questions are asked.

The Chairman: Will you state your motion again, Senator Bursum?

Senator Bursum: My motion was that in the examination the inquiry shall not relate to pending controversies before any of the Federal courts in which Mr. Sinclair is a defendant, and which questions would involve his defense.

Senator Dill: Mr. Chairman, before that motion is put, if that motion is carried, does that preclude questions regarding the Mammoth Oil Co. and the Sinclair companies and the handling of their stocks and the transactions in connection with them?

Senator Bursum: Well, it relates to the case.

Senator Dill: Then, we should vote this question down.

Senator Walsh of Montana: Of course we will vote it down. It is the same thing as the general proposition. If we do not examine Mr. Sinclair about these matters, there is not anything else to examine him about. Then I have not anything else that I want to examine him about."

The amendment of Senator Bursum was voted down.

[fol. 14] Several questions were then put to Mr. Sinclair, alleged in the indictment to have been pertinent to the maters and questions then and there under inquiry before the Committee, which he refused to answer.

The matter of his contumacy was referred to the United States District Attorney for the District of Columbia; and upon presentation to the Grand Jury an indictment was returned in ten counts covering ten separate questions which had been asked by the Committee and which the defendant had refused to answer. The defendant was convicted on the first, fourth, fifth and ninth counts.

In the first count, after setting out the various resolutions of the Senate and reviewing the proceedings which led up to the inquiry of March 22, 1924, defendant is charged with refusal to answer the following question:

"Senator Walsh: Mr. Sinclair, I desire to interrogate you about a matter concerning which the committee had no knowledge or reliable information at any time when you had heretofore appeared before the committee and with respect to which you must then have had knowledge. I

refer to the testimony given by Mr. Bonfils concerning a contract that you made with him touching the Teapot Dome. I wish you would tell us about that."

By way of innuendo it is then alleged:

"Said Hon. Thomas J. Walsh thereby meaning and intending, as said Harry F. Sinclair then and there well knew [fol. 15] and understood, to elicit from him the said Harry F. Sinclair, facts, which then were within his knowledge, touching the execution and delivery of a certain contract bearing date September 25, 1922, made and executed by and between said Mammoth Oil Company, one F. G. Bonfils and one John Leo Stack, which was executed on behalf of said Mammoth Oil Company by said Harry F. Sinclair as President of said Mammoth Oil Company, and which, among other things, provided for the payment, by said Mammoth Oil Company, unto said F. G. Bonfils and said John Leo Stack, of the sum of $250,000.00, on or before October 15, 1922, in consideration of the release, by said F. G. Bonfils and said John Leo Stack, of rights to lands described in said Executive Order of April 30, 1915, and embraced in the aforesaid lease of April 7, 1922."

In the fourth count defendant is charged with refusal to answer the following question:

"Senator Walsh of Montana: Since you were on the stand last Mr. John C. Shaffer told us about an agreement between yourself and Secretary Fall, under which Mr. Shaffer was to receive from you a certain portion of the territory covered by the lease which you secured for the Mammoth Oil Company. Will you tell us about that matter?"

By way of innuendo it is alleged:

"Said Hon. Thomas F. Walsh thereby meaning and intending, as said Harry F. Sinclair then and there well knew and understood, to elicit from him the said Harry F. Sinclair facts which then were within his knowledge touching [fol. 16] the making of a certain oral agreement whereby one Albert B. Fall, then Secretary of the Interior of the United States, covenanted and agreed with said Harry F.

Sinclair that a lease then under negotiation by said Harry F. Sinclair with the said Albert B. Fall as such Secretary for the lands mentioned in said Executive Order of April 30, 1915, would be leased to the said Mammoth Oil Company only upon the condition that he the said Harry F. Sinclair would covenant and agree to set aside certain of the leased lands for the benefit of one John C. Schaffer, who was the person referred to in the said question, which said question in this count of this indictment mentioned then and there, as said Harry F. Sinclair then well knew, was a question pertinent to said matters and questions then and there under inquiry before said Committee as in said first count aforesaid."

In the fifth count of the indictment defendant is charged with the refusal to answer the following question:

"Senator Walsh of Montana: Mr. Sinclair, will you tell the committee where and when you met Secretary Fall during the months of November and December last?"

By way of innuendo it is alleged:

"Said Hon. Thomas J. Walsh thereby meaning and intending, as said Harry F. Sinclair then and there well knew and understood, to elicit from him the said Harry F. Sinclair facts which then were within his knowledge touching conferences theretofore had between said Harry F. Sinclair [fol. 17] and said Albert B. Fall, who had been Secretary of the Interior of the United States, who had been a witness before the said Committee and had testified to certain facts, the truth whereof the said Committee was desirous to establish in the determination of further facts touching the execution and delivery of the said lease of April 7, 1922, for the lands mentioned in the said Executive Order of April 30, 1915; which said question in this count of this indictment mentioned then and there, as said Harry F. Sinclair then well knew, was a question pertinent to said matters and questions then and there under inquiry before said Committee as in said first count aforesaid."

In the ninth count of the indictment defendant is charged with the refusal to answer the following question:

"Senator Adams: Mr. Sinclair, I believe in an earlier hearing you testified, in answer to a question, that you had in no way, and none of your companies had in any way, given or loaned anything to Secretary Fall. Is that correct?"

By way of innuendo it is then alleged:

"Said Hon. Alva B. Adams thereby meaning and intending, as said Harry F. Sinclair then and there well knew and understood, to elicit from him the said Harry F. Sinclair facts which then were within his knowledge touching the circumstances under which said lease of April 7, 1922, had been made, and the question whether any improper or unlawful means or influence had been used in the procurement of that lease; which said question in this count of this in-[fol. 18] dictment mentioned then and there, as said Harry F. Sinclair then well knew, was a question pertinent to said matters and questions then and there under inquiry before said Committee as in said first count aforesaid."

The trial court in submitting the case to the jury instructed as follows:

"You have got to decide these four questions. Whether Sinclair was summoned as a matter of fact, whether he appeared as a matter of fact, in Washington; whether he was sworn as a matter of fact, whether he was asked these questions and refused to answer them you are concerned only with the matters of fact that are involved in those questions. Did he in New York get the command of the Senate Committee to appear here as a matter of fact? Did he appear here? When he appeared, did one of the Senators—I have forgotten which one—or some officers of that Committee administer to him an oath? And did he then and there proceed to give certain testimony, and later when he was recalled again refuse to give certain testimony?"

The jury returned a verdict of guilty, and defendant was sentenced to pay a fine of $500, and to imprisonment in the Washington Asylum and Jail for the period of three months.

This court respectfully certifies that the following difficult questions of law arise upon the record, the decision of which is necessary for the proper disposition of this case; and to the end that a correct result may be reached, desires the instruction of the Supreme Court of the United [fol. 19] States upon said questions, to wit:

QUESTIONS CERTIFIED

Question No. 1. May a witness summoned before a committee of Congress to testify in an inquiry being conducted in aid of legislation lawfully refuse to answer questions which call for the disclosure of the private affairs of the witness?

Question No. 2. May such a witness refuse to answer questions directed to matters wherein relief or redress could be had only by a judicial proceeding?

Question No. 3. Would a witness, if it appears that the inquiry, though authorized in aid of legislation, is in fact directed to matters which have been referred by Congress to the courts, and in which relief or redress can be had only by a judicial proceeding, and in which proceeding the witness is a defendant, be justified in refusing to answer questions directed to the matters so referred and pending in the courts?

Question No. 4. Was the issue of the pertinency of the questions propounded to Mr. Sinclair to the investigation being conducted by the Committee of the Senate a mixed [fol. 20] question of law and fact for the determination of the Court and Jury, or was it solely a question of law?

Question No. 5. May a witness, who is alleged to have been a party to a conspiracy to defraud the United States through certain contracts and against whom judicial proceedings have been instituted, refuse to answer questions propounded by a duly authorized Senate Committee insofar as the questions involve the connection of the witness with the contracts forming the basis of the judicial proceeding?

Respectfully submitted.

Charles H. Robb, Associate Justice. Josiah A. Van Orsdel, Associate Justice. Charles S. Hatfield, Judge U. S. Court of Customs Appeals.

Endorsed: No. 4681. Harry F. Sinclair, Appellant, vs. United States of America. Certification to the Supreme Court of the United States. Court of Appeals, District of Columbia, Filed Nov. 20, 1928, Henry W. Hodges, Clerk.

[fol. 21] Clerk's certificate to foregoing omitted in printing.

Endorsed on cover: File No. 33,864. District of Columbia Court of Appeals. Term No. 555. Harry F. Sinclair vs. The United States of America. (Certificate.) Filed November 26th, 1928. File No. 33,864.